Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1986

RUBY APPELMAN, et al.,
Petitioners,

v.

GEORGE BEACH, Assessor of Bernalillo County, TIMOTHY EICHENBERG, Treasurer of Bernalillo County, and BOARD OF COUNTY COMMISSIONERS OF BERNALILLO COUNTY,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW MEXICO

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June 17, 1980

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GEORGE BEACH, Assessor of Bernalillo County, TIMOTHY EICHENBERG, Treasurer of Bernalillo County, and BOARD OF COUNTY COMMISSIONERS OF BERNALILLO COUNTY,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW MEXICO

RUBY APPELMAN, et al.[1], the Petitioners herein, pray that a Writ of Certiorari be issued to review the Opinion of the New Mexico Supreme Court, entered in these proceedings on March 21, 1980.

OPINIONS BELOW

The Opinion of the Supreme Court of the State of New Mexico is reported in the State Bar of New Mexico Bulletin and Advance Opinions, Vol. 19, No. 14, April 3, 1980, and printed in Appendix "C" hereto, infra, p. 23. The Decision of the District Court for Bernalillo County, which was affirmed by the New Mexico Supreme Court, is unreported and appears at Appendix "D", infra, p. 30.

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1. A complete list of the petitioners herein may be found at Appendices "A", infra p. 14 and "B", infra p. 22.

JURISDICTION

The Opinion of the Supreme Court of the State of New Mexico, Appendix "C", infra p. 23, was entered on March 21, 1980. The jurisdiction of the Supreme Court of the United States is invoked under 28 U.S.C.A. § 1257 (3).

QUESTIONS PRESENTED

This suit was brought by Ruby Appelman and one thousand and forty-six (1046) named plaintiffs (listed in Appendix "A") on behalf of themselves and all persons similarly situated to recover that portion of their property taxes paid in 1976 and 1977 as a result of a reappraisal program which had been discontinued. The discontinuation of the reappraisal program left the petitioners' property appraised at a much higher proportionate value than the nonreappraised property in the County. Additionally, suit was brought by seventy-one named plaintiffs (listed in Appendix "B") who owned newly constructed homes to recover a proportionate part of their taxes based upon the theory that their property was appraised at one-hundred per cent (100%) of full market value while the county wide average of appraised value compared to full market value was only fifty-five per cent (55%).

The New Mexico Supreme Court, in its Opinion, stated:

> It is unlawful and grossly inequitable for one set of taxpayers to pay on market value and others to be charged at a much lower rate, as is indicated in this record. It is common knowledge, of which we take judicial notice, that these flagrant inequities exist throughout the state. Public officials who are responsible for reappraisal programs mandated by the legislature are to be condemned for permitting such manifest discrimination. (Appendix "C", p. 28)

The New Mexico Supreme Court ruled, however, that the

only remedy available to the Petitioners was to seek an order requiring the County to reappraise the remainder of the property in the County and, as a consequence of the ruling with regard to the available remedy, declined to rule on whether the action could be brought as a class action or on any of the other questions presented.

THE QUESTION THEREBY arising is whether the United States Constitution requires a refund of taxes paid by the named Petitioners and the Class or, alternatively, the payment of damages, in light of the finding by the New Mexico Supreme Court that unequal appraisals resulting from the discontinued reappraisal program were grossly inequitable.

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment 14, Section 1:

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article II, Section 18, of the New Mexico Constitution: [Due process; equal protection; sex discrimination.]

> No person shall be deprived of life, liberty or property without due process of law; nor shall any person be denied equal protection of the laws. Equality of rights shall not be denied on account of the sex of any person. ....

Article VIII, Section 1, of the New Mexico Constitution:

[Levy to be proportionate to valúe; uniform and equal taxes; percentage of value taxed.]

Taxes levied upon tangible property shall be in proportion to the value thereof, and taxes shall be equal and uniform upon subjects of taxation of the same class. Different methods may be provided by law to determine value of different kinds of property, but the percentage of value against which tax rates are assessed shall not exceed thirty-three and one-third percent. . . . .

STATUTES INVOLVED

Section 7-36-15 N.M.S.A. 1978. See Appendix "E", p. 34.

Section 7-38-40 N.M.S.A. 1978. See Appendix "F", p. 35.

STATEMENT OF THE CASE

A vast majority of Petitioners own property located in Bernalillo County, New Mexico, which property was reappraised as part of a reappraisal program commenced in late 1974 by Bernalillo County. The remaining Petitioners own newly constructed homes which were placed on the tax rolls at full market value.

The County's reappraisal program was targeted for completion over a four-year period. This program was to be ongoing in nature and was, in fact, ongoing as of December 31, 1976. Petitioners allege that the program was abandoned after December 31, 1976. For the tax years 1976 and 1977, no additional properties were placed on the tax rolls at the new appraised values resulting from the reappraisal program.

The reason the County cut back or halted the reapprai-

sal program is not clear. However, it is clear that the program was either discontinued or drastically curtailed after December 31, 1976. The present lawsuit was filed by the Petitioners on December 13, 1977. The Petitioners sought a refund or damages for taxes paid in 1976 and 1977 and a reduction in their property valuation.

The District Court, at a hearing on several of the Respondents' Affirmative Defenses and Petitioners' Motion for Default Judgment entered the judgment contained in Appendix "D". This judgment was entered prior to any hearing on the merits and in essence found that the property in the County was not equally appraised, and ordered the county to continue reappraisals. The relief ordered by the Court was not sought by the Petitioners or the Respondents.

In the Judgment, the District Court found that because there was no class action rule in effect which implemented the New Mexico class action statute, the action could not be brought as a class action. The Court found that all Petitioners would be precluded from recovering tax rebates for the year 1976, or prior years, because they had not filed suit within the time required by § 7-38-40 N.M.S.A. 1978, a time limit which had passed prior to the discontinuation of the reappraisal program. The Court found that the only relief that it could give with regard to the 1977 taxes was to order that all other property in Bernalillo County be placed on the tax rolls at full market value. The Court ordered the County Assessor to promptly complete the overall reappraisal of Bernalillo County and keep it current on an ongoing basis.

The Respondents filed an appeal. The Petitioners filed a cross appeal appealing the denial of a class action, the

ruling that limitations barred the Petitioners in recovering the taxes paid in 1976, and the remedy ordered by the District Court.

The New Mexico Supreme Court affirmed the Opinion of the District Court for Bernalillo County on March 21, 1980. See Opinion, Appendix "C", infra p. 23. The New Mexico Supreme Court, in its Opinion, stated:

> It is unlawful and grossly inequitable for one set of taxpayers to pay on market value and others to be charged at a much lower rate, as is indicated in this record. It is common knowledge, of which we take judicial notice, that these flagrant inequities exist throughout the state. Public officials who are responsible for reappraisal programs mandated by the legislature are to be condemned for permitting such manifest discrimination. (Appendix "C" p. 28)

The Court found that the Petitioners had sought the improper remedy and that they should have requested the County be ordered to raise the valuation level of other property in the County to full market value.

The federal question sought to be reviewed, the right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution, was raised at the outset of the case in the court of first instance through the complaint by allegations to the effect that the actions of the County discussed in this statement of the case violated the Petitioners' rights under the Fourteenth Amendment to the United States Constitution (R. p. 12, allegations 12 and 15 and R. p. 14, allegation 3 of Count II). It is not clear from the judgment entered by the Court of first instance how the Court passed on the federal question. It is clear that no relief was given to the taxpayers for any discrimination prior to the entry of the judgment. The

same federal question was raised in the brief of the Petitioners filed in the New Mexico Supreme Court, this time specifically with regard to the remedy as well as the unequal treatment. The argument before the New Mexico Supreme Court was that the Fourteenth Amendment to the Constitution of the United States prohibited the discrimination *and* required a refund or the award of damages in this situation (See Plaintiffs - Appellees - Cross-Appellants' Answer Brief and Brief in Chief pp. 4, 5, 6, 7, 30). The New Mexico Supreme Court does not specifically address the issue of whether the Petitioners' rights under the United States Constitution were violated, although the language of the opinion strongly suggests that such a violation was found. The New Mexico Supreme Court flatly rejected the argument that a refund or damages were required by the United States Constitution and found that the only remedy available to the Petitioners was to seek to have the appraisals in the remainder of the County increased.

REASONS FOR GRANTING THE WRIT

The decision of the New Mexico Supreme Court directly conflicts with the due process and equal protection principles enunciated in this Court's rulings in *Sioux City Bridge Company v Dakota County, Nebraska*, 260 U.S. 441, 43 S.Ct. 190, 67 L. Ed. 340 (1923), and in *Township of Hillsborough v Doris Duke Cromwell*, 326 U.S. 620, 66 S.Ct. 445, 90 L.Ed. 358 (1946).

The question arising in the present case, as well as in the *Sioux City* and *Hillsborough* cases, concerns whether, given the facts in each situation, the remedy for a taxpayer who has been found to have been discriminated against because he is taxed on a greater proportion of the market value of his property than other taxpayers within the jur-

isdiction of the taxing authority, should receive a reduction of his appraisal and a refund of taxes paid under the higher appraisal, or whether the taxpayer's remedy is to secure an increase in the appraisals of the great mass of under appraised property in the taxing district.

In *Sioux City Bridge Company v. Dakota County, Nebraska, supra,* a bridge was appraised at $600,000.00. Since the bridge design was out of date, the owners of the bridge company thought that this appraisal was excessive, and appealed to the Board of Equalization, which then raised the appraisal to $700,000.00, finding that sum to represent the true value of the bridge. The Nebraska Supreme Court found that other property in the district was appraised at 55 percent of its true value, and that it would be manifestly unjust to the bridge company to appraise its property at its true value. However, the Nebraska Supreme Court stated that it followed the rule that when property is appraised at its true value, and other property in the district is appraised below its true value, the proper remedy is to have the appraisals of the property appraised below its true value raised, rather than to have the appraisal of the property appraised at its true value reduced. As in the present case, the dilemma presented was that the property of some taxpayers was appraised at 100 percent of the value of the property, while the rest of the property in the taxing district was appraised at a much lower percentage of its true value.

The United States Supreme Court stated that Federal Courts, dealing with this question, have held that:

> . . . such a result as that reached by the supreme court of Nebraska is to deny the injured taxpayer any remedy at all, because it is utterly impossible for him, by any judicial proceeding, to secure an increase in the assess-

> ment of the great mass of underassessed property in the taxing district. *Sioux City Bridge Company v. Dakota County, Nebraska, supra* at 446.

The United States Supreme Court continued:

> This Court holds that the right of the taxpayer whose property alone is taxed at 100 percent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of the true value, and the uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law. In substance and effect, the decision of the Nebraska supreme court in this case upholds the violation of the Fourteenth Amendment to the injury of the bridge company. *Id.*

The United States Supreme Court reversed the judgment of the Nebraska Supreme Court.

The New Mexico Supreme Court did find that such a situation as exists in the record of this case is "manifest discrimination" (Opinion, Appendix "C"). The New Mexico Supreme Court, however, failed to order a reduction in the appraisals on the Petitioners' property, grant a refund of the past taxes, or give damages for the past unequal treatment.

The *Sioux City Bridge Company* holding that the Fourteenth Amendment requires a taxpayer whose property is appraised at 100 percent of its true value must have his appraisal reduced to the percentage of that value at which other property in his taxing district is appraised, even though this is a departure from the requirement of statute,

has been restated in *Township of Hillsborough v. Cromwell*, 326 U.S. 620, 66 S.Ct. 445, 90 L. Ed. 358 (1946).

In the *Hillsborough* case, the taxpayer alleged that New Jersey taxing authorities had systematically and intentionally singled her out for discriminatory treatment in the assessment of taxes for which she was without remedy under the laws and decisions of New Jersey. Alleging diversity of citizenship, she brought an action in the United States District Court, praying that her assessments be declared invalid and in contravention of the due process and equal protection clauses of the Fourteenth Amedment, as well as applicable New Jersey Statutes. The District Court entered a judgment for the taxpayer which was affirmed by the Court of Appeals. The New Jersey Courts had held that a taxpayer who has been singled out for discriminatory taxation may not obtain equalization by reduction of his own assessment, but that his remedy is restricted to proceedings against other members of his class for the purpose of having their taxes increased.

The United States Supreme Court, in *Hillsborough*, stated:

> The equal protection clause of the Fourteenth Amendment protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment. He may not complain if equality is achieved by increasing the same taxes of other members of the class to the level of his own. The constitutional requirement, however, is not satisfied if the state does not itself remove the discrimination, but imposes on him against whom the discrimination has been directed the burden of

seeking an upward revision of the taxes of other members of the class. *Id.* at 623.

The Court found that New Jersey's remedy is "not adequate to protect respondent's right under the Federal Constitution." *Id.* at 624.

The New Mexico Supreme Court, in its Opinion in the present case, cites *Skinner v. New Mexico State Tax Commission*, 66 N.M. 221, 345 P.2d 750 (1959), concerning situations where a taxpayer's property is appraised at a higher percentage of its value than is other property in the district. In that case the sole question was whether a tax equalization program in a county, commenced but not completed in a single year, violated the New Mexico constitutional provision requiring equal and uniform taxes, Article VIII, §1. In that case, the Bernalillo County Assessor, being limited as to funds and personnel, was, in 1957, only able to reappraise or revalue about 20 percent of the property in the County. Those 20,000 pieces of property were put on the assessment rolls at the new valuation, whereas the remaining 80 percent of the property in the County remained on the rolls at their 1956 valuations. The New Mexico Supreme Court stated:

> In New Mexico, it has long been the rule that a taxpayer who is not assessed more than the law provides has no cause for complaint in the courts in the absence of some well defined and established scheme of discrimination or some fraudulent action. . . . The taxpayer's remedy is to have the assessing authority raise the value on the property claimed to be, (sic) valued too low to a level with his own. *Id.* at 223.

In *Skinner*, the trial court had found that the equalization program was a continuous process, that it was not contemplated that it could be completed within any given year,

and that there was no contravention of the constitutional provision. The taxpayers had shown no discrimination or fraud, nor did they ask that all other property be immediately raised in assessed value. They admitted that they had been underassessed in the past, and wished to continue to be under assessed until every other piece of property was placed on the tax rolls at comparative values.

The New Mexico Supreme Court distinguished the *Skinner* case from *Sioux City Bridge Company, supra,* in which one or a few taxpayers were arbitrarily assessed at a higher level than others. The New Mexico Supreme Court presumed that tax officials would do their duty in accordance with the law and that the reappraisal would continue in accordance with the plan. In the event that the appraisal did not continue, the New Mexico Supreme Court found that appellants would by fully justified in taking action to force a corresponding revaluation of all other property in the County. Since only one year had passed since the program had begun, the Court trusted that reappraisal would be completed in the immediate future.

In the present case the reappraisal program had been discontinued and no attempt had been made to correct inequalities after December 31, 1976. The New Mexico Supreme Court, in the present case, found illegality, gross inequity, and manifest discrimination, yet the Petitioners were *not* granted relief. The New Mexico Supreme Court found:

> . . . Appelman sought the *improper remedy*; she should have requested that the County be ordered to raise the valuation level of the other property in the County to full market value. (Appendix "C" p. 28, Emphasis added.)

Having stated that the circumstances existing in this case are "unlawful" and "grossly inequitable" and that they constitute "manifest discrimination," the New Mexico Supreme Court set forth a remedy which violates the Fourteenth Amendment of the United States Constitution, by stating that the Petitioners only remedy is to raise the valuation level of other property in the county to full market value. In order that the Fourteenth Amendment of the United States Constitution be properly upheld, and the Petitioners not be denied due process and equal protection of the law, the Petitioners should be granted a refund or demages and the appraisals on their property should be reduced to their level prior to the aborted reappraisal program. To hold otherwise would be directly contrary to previous United States Supreme Court Opinions.

CONCLUSION

For these reasons, a Writ of Certiorari should be issued to review the Opinion of the New Mexico Supreme Court.

Respectfully submitted,
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By: _____

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June 17, 1980

Appendix A

Abbott, Roger B. & Jo Ann
Abeyta, Benjamin
Alcon, Eluid & Prebble
Alderete, Mr. & Mrs. Leo
Alexander, Jessie M.
Allen, George & Carol
Allen, Joseph
Allen, William & Karen
Allred, Oliver & Patricia
Ames, John & Elizabeth
Andazola, Arthur H. ETUX
Anderson, Jack R.
Anderson, John & Shelby
Anderson, Loran G.
Anderson, Paul & Adele
Andes, Lloyd M.
Anglin, Billy & Lola
Anglin, Perry & Marcelina
Appelman, Ruby & Jules
Ashley, Chris
Augustine, John & Eleanor
Austin, Edward
Azner, Harold & Betty
Baars, Kurt P.
Baird, Willet J. ETUX
Banks, John & Kathryn
Baldelli, Roger
Barela, Ray
Barnard, Ralston & Carolyn
Basehart, Margaret & Harry
Bashein, Ann M.
Beale, William & Ruth
Berbermeyer, Landis ETUX
Beeson, Charles
Bell, Col. Roscoe L.
Bell, William & Nita
Bennett, Charles F.
Benninghoff, Donald
Berry, Ethel M. & Frances
Berube, Jean & Virginia
Bickle, Larry
Bigelow, Lillian H.
Birts, Milo & Betty
Bliss, Sheldon & Flossie
Bolek, Frank & Gloria
Bollinger, Colbert & Catherine
Bond, Joe R. ETUX
Barnett, Gordon, P. ETUX
Bonner, Frank & Fran
Book, Robert L.
Boughey, Alma S.
Bowen, Adela G.
Bradley, Joyce T.
Brandenburg, James ETUX
Brannan, Flossie F.
Bryant, Jimmie & Violet
Brewer, C. W. & Katherine
Brisky, Edward & Maria
Brown, Creighton & Mazelle
Brown, Jewell & Bonnie Wader
Brown, Richard ETUX
Bruner, Alfred & Carol
Buckholdt, William ETUX
Buckingham, Kent
Budagher, Dorothy
Budagher, William
Buldain, George & Jeane
Bullard, John & Ellen
Bullock, Harry & Betty
Bumgarner, Ronald & Laurel
Butler, C. O.
Butterbaugh, W. & Bernice
Butterfield, Helen B.
Cahill, Kenneth & JoAnn
Calvin, James & Yvonne
Carnicom, Donald & Mina
Carr, Gerson & Arleen
Carver, Charles & Mary

Casey, John & Leona
Casey, Mr. & Mrs. Leslie
Castillo, Jacob & Eloisa
Castillo, Ray V. ETUX
C de Baca, Nazario & Consuelo
Chambly, Madelyn
Chandler, Lionel ETUX
Chapman, Tom E.
Chappell, Buddie & Mary
Chavez, Carmel J. ETUX
Chavez, Jack & Barbara
Cherpelis, George
Cigolle, Charles & Gladys
Clark, Arthur & Caroline
Clark, Kenneth T.
Clark, Thomas ETUX
Clark, William A.
Clay, Marion Keleher
Cleghorn, Donald C.
Clem, Robert & Caroline
Clift, Walter
Clugston, Gerald M.
Coffey, Francis & Marie
Coffman, Donald & Mildred
Collier, William & Betty
Collier, William & Judith
Combs, John & Lillie
Cooney, Lloyd
Copeland, James & Margaret
Cordova, Alfredo, Margaret
Coriell, Louis & Marilyn
Corley, Bennie ETUX
Corn, James T.
Cotruzzola, Marlies
Cotter, John A. ETUX
Coughlin, James W.
Cox, Leslie E.
Crawford, Joanne L.
Crawforth, Lealand & Doris
Creamer, John ETUX
Creative Kitchens, Inc.
Criswell, Edward & Oleta
Cropp, Louis & Viola
Culp, David ETUX
Cummings, Donald & Lucy
Cunningham, William Jr.
Czarnowsky, Albert
Dal, Jensen & Pat
Dalphin, George & Helen
Darrow, Earl & Ann
Davis, Helen Marie
DeAngelis, Joseph
Deen, Mary Juanita &
Barbara T. Parsons
DeLien, Horace & Maxima
Degenhardt, William & Paula
DellaLonga, Joseph ETUX
Denison, William & Mary
Denny, Raymond
DeYoung, Lance & Shannon
Dickinson, Mr. E. L.
Dishuck, John J.
Dix, Fenton & Lebia
Dodson, Walter W. ETUX
Dohner, Zane & Virginia
Donaldson, E. U.
Downs, Wilber
Draper, Don & Beverly
Driscoll, Erma E.
Drummond, Harold ETUX
Drypolcher, Louis E.
Duda, George & Lydia
Duderstadt, Robert ETUX
Duffy, Edward & Betty
Duran, Napoleon ETUX
Durbon, William K.
Eckstein, Roman A.
Edwards, Loren & Ada
Elder, James & Virgie
Elerick, Byron & Nell

Elmer, Lester & Fay
Endres, Carl ETUX
Esparza, Andres & Lenore
Espinoza, Benjie & Fidella
Espinoza, Ramon T. ETUX
Estrada, Robert & Marcia
Ewald, Robert
Ewing, Ronald & Judy
Fair, Elton T. ETUX
Falck, Melvin & Jean
Fanning, James & Elizabeth
Farley, Oneita & Patricia
Farone, Leonard C.
Federal Bldg. Service Inc.
Feist, John ETUX
Felty, Darrell & Bobbie
Fogge, Kay & Pearle
Fordice, James & Mary
Foster, Alfred & Margaret
Foti, Dominick ETUX
Fowler, Glenn & Mary
Frank, Arldelle ETUX
Frank, Austin & Eleanor
Franks, Charlotte
Fransanito, Robert & Elaine
Franzen, Richard ETUX
Frazier, Herman M.
Freeman, Randy & Patricia
Gonzales, Frank & Louis
Gonzales, Fred & Clemmie
Gonzales, George & Carmen
Goodrich, Arnold & Edna
Gordon, Beatrice
Gossard, Leonard & June
Grant, Kenneth & Ida
Grayson, Eleanor
Green, Margaret C.
Greenholt, Charles ETUX
Gregory, Joseph A.
Grice, Albert ETUX
Grice, George ETUX
Gutierrez, Fanny F.
Gabaldon, Salvador
Gallaspy, Frank ETUX
Gallinger, M. & Yearoat, C.
Galt, John & Margureite
Gaona, John & Corine
Garcia, Joe & Josephine
Garcia, Joanna Clark
Garcia, Manuel & Leonela
Garcia, Mrs. Onofre
Garcia, Vincenta A.
Garff, Gerald P.
Garlin, Russel & Pauline
Garling, Howard & Edla
Gedanic, Joseph & Elaine
Geders, John F. ETUX
Geders, Katherine
Germond, Hallet & Mary
Gilbert, Jr. ,Raymond H.
Giles, Jean B. ETAL
Gillen H. B. & Estella
Gillett, Ivan & June
Gmyr, Walter & Eunice
Gochnaur, Dixie
Godin, Joseph & Alberta
Gold, Ashley
Hall, Cyrus & Luise
Hall, James & Dorothy
Hamil, Roy A.
Hampson, Mary
Harboldt, John & Pauline
Hardage, William & Sharyl
Hardie, Wade & Annette
Harding, Robert & Iola
Harling, Herbert & Agnes
Harms, Paul
Harrison, James & Doris
Harrison, Helen F.
Harrison, Stanley & Love

Hartman, Phillip ETUX
Hartnett, George & Mary
Harvey, Donald & Gail
Harvey, James D.
Hasaka, Robert ETUX
Hawthorne, George R.
Heagley, Donald ETUX
Heath, Louise B.
Helmick, Richard & Dorothy
Henderson, Robert
Hendrix, James
Heskett, Billy & Wanda
Hesson, James
Higginbotham, Ewell ETUX
Higgins, Francis & Helen
Hilton, Iola N.
Hines, Frank & Dolores
Hinkle, Patricia & Scott
Hiser, Robert J.
Hodges, John ETUX
Hoffman, H. R. & Betty
Hoffman, Harold S. ETUX
Hogan, R. R. & Lois
Hogue, Estelle
Holmes, Helen F.
Holts, Alfred & Barbara
Hoover, C. & Elizabeth
Horton, Lois S.
Hostetler, Harry & Sharon
Houck, Kathrine
Howard, Harold & Ruth
Hughes, Maurice & Jettie
Hughes, Walter & Effie
Hughes, Walter A.
Hughey, Eugene & Evelyn
Hull, Loy
Hunter, Thomas O.
Hurtel, Al & Kaisey
Ingersoll, Charles & Ruth
Ivener, Max
Jack, Doris M.
Jackson, Phillip ETUX
Jacobi, Richard & Adah
Jankowski, R. T.
Jaramillo, Charlie
Jeffers, Sam & Ida
Johns, R. A. & Jean M.
Johnson, Ben & Josephine
Johnson, Nina
Johnson, Robert & Ellen
Johnston, Willis & Dorothy
Jones, Eula P.
Jones, Ralph
Jordan, Robert & Louise
Kammerer, Floyd & Vada
Kasner, Edmund & Elizabeth
Kavet, Richard & Julia
Kazanecki, Louis & Marie
Kelly, Albert & Rheuanna
Kelly, John & Patricia
Kelsey, Charles & Judith
Kilman, Gary ETUX
Kite, Frank D.
Klaudt, John D. ETUX
Koller, John R.
Kollman, Marie M.
Kollman, Raymond & Eloise
Konrad, Herman & Diane
Kortum, Marvin & Theresa
Kostre, M. A. ETUX
Kramer, Gary & Linda
Krause, Fritz & Ursula
Krauth, Glenn & Mary
Kubina, Gregory
Kuffer, Duane
LaFon, J. O. & Julia
Lamb, Charles M.
Lambert, Paul D.
Lasley, Louise
Laughlin, William & Lucy

Lauritsen, Terry & Nancy
Lavondoski, Joseph J.
Layman, Douglas ETUX
Ledwith, James & Muriel
Leigh, Stuart & Marilyn
Lemons, Charles & Elizabeth
Lente, Arthur & Erma
Lewis, Wayne & Katherine
Lindsay, William & Beverly
Lindsey, Francis & Mary
Logan, Reuben & Elaine
Lopez, Andrew
Lopez, Boni & Fedelina
Luckie, Lorenzo F. ETUX
Lowe, Lawrence
Lowe, Lynn
Lucero, Gabriel ETUX
Lucero, Gene & Lorine
Lueras, Ernestello ETUX
Lybrand, Basil & Gladys
Maccario, William
Maillet, Andre E. ETUX
Malitz, Charles & Mamie
Mallett, Alfred ETUX
Mandel, Samuel
Manzari, Frank & Marjorie
Mares, Ernest & Estella
Markey, William & Barbara
Marshall, Billy Wayne ETUX
Martin, Chas. ETUX
Martinez, Emilio G.
Mason, Esther
Matey, Douglas & Marion
Matthews, Kedric & Alicia
Mattone, Edythe
Mayschak, Walter & Margaret
McBride, Thomas & Joan
McCahon, Lawrence Earl
McCarthy, Robert & Rosalin
McCarty, W. Duane ETUX
McCarthy, Jack & Victoria
McClurg, Val & Colleen
McCulloch, Silas & Julia
McDowell, James & Dorothy
McEwen, Morris & Stephanie
McHugh, Gertrude
McKay, Horace ETUX
McKenzie, Glenn & Nancy
McMullin, John
McNeill, Everette & Beverley
Meggers, Frank
Mellady, David & Mary
Melloy, Raymond J. ETUX
Menapace, Frank ETUX
Mendel, John & Winifred
Menk, Robert L. ETUX
Menke, Robert O.
Merovka, Lawrence J.
Mershon, Ronald & Judy
Messec, Harry & Mary
Meyerhein, Richard & Jean
Meyer, Eugene ETUX
Meyners, Theodore & Ruth
Milford, Homer E.
Millenbaugh, Robert & Vera
Millenbaugh, Florence ETAX
Milligan, G. Dennis ETUX
Milne, J. Lawrence
Mimovich, Edward
Mitchell, Clifford
Mitchem, Robert ETUX
Mitchem, Roger ETUX
Moedl, Karl ETUX
Moesser, Kent & Gaye
Molina, Carlos & Elynn
Montano, Pete
Montford, John & Iva
Montoya, Juan R.
Moore, Ivan & Borghild
Morell, Lawrence

Morris, George & Ignacita
Morse, Kenton Polk
Mortley, Jack ETUX
Moseley, Robert D.
Mueller, N. A.
Mullins, Joseph
Murphy, Barbara J.
Muse, William ETUX
Myers, Monty & Sharlynn
Nabors, William C.
Nagel, John & Joli
Napoleon, Fred & Audrey
Nauert, Austin & Virginia
Needham, Charles & Ruth
Neff, Edward & Francine
Neff, Dane & Violet
New, Henry ETUX
Newlander, Alfred
Nichter, Christine S.
Nidey, Pauline
Norris, Frank & Evelyn
Odell, Gordon & Carol
O'Donnell, Thomas ETUX
Ogle, Garry L. ETUX
Oliver, William & Frances
O'Neal, Evelyn
O'Neil, Gary T.
O'Neil, Woodrow & Lucille
O'Neill, Joseph & Helen
Ortiz, Frank ETUX
Otero, Placido & Frances
Pace, Earle C. ETUX
Pace, Tomas L. ETUX
Page, Frank M. ETUX
Pallister, Francis & Mary
Palmer, Darwin ETUX
Paolitti, Bruno ETUX
Pappas, Peter James ETUX
Park, Marvin J.
Parks, Morgan & Elizabeth
Pasnewski, Chester ETUX
Paulsen, Ira ETUX
Peck, Ralph & Marjorie
Penny, Norris & Margaret
Perini, Bernard ETUX
Peterson, Carl
Peterson, Lester & Joan
Petras, George
Petruno, Michael ETUX
Pettine, Henry ETUX
Peurifoy, R. L. ETUX
Pfersdorff, Ottomar ETUX
Pfingsten, Margaret
Pflaum, Timothy D. ETUX
Pitts, Louis & Carol S.
Poulsen, Peggy C.
Porter, Arthur ETUX
Price, Irene B.
Proctor, Clark A.
Provoost, George ETUX
Pulliam, Eugene H. ETUX
Putnam, George W. ETUX
Purcelli, Edward ETUX
Putnam, Hugh & Nellie
Race, Allan M. ETUX
Rader, Thomas & Janis
Rajace, Ali ETUX
Ramey, Georgia W.
Ray, Charles L. ETUX
Real, Lewis & Lucinda
Redding, Haddon & Roberta
Redels, Carl & Bonnie
Register, Mahlon & Faye
Rehder, Robert ETUX
Renfro, Charles & Bella
Rexroat, Ola M.
Rhatigan, Edwin & Marcella
Richter, Henry A. ETUX
Richter, Max & Norma
Riker, Sally

Riordan, Michael ETUX
Ristau, Siegfried & Elsie
Robb, J. D.
Roberson, Dorothy M.
Roby, Maclin & Dorothy
Roddy, Ida C.
Rogillio, Douglas
Rollag, Ole ETUX
Romney, Bryan ETUX
Rope, E. Dorothea
Rose, Clyde
Ross, Charles & Rita
Rowell, Steven & Trudy
Ruminski, Frank Z.
Rupert, D. R.
Rust, Richard & Maurita
Saavedra, Juan & Juana
Saavedra, Manuel D.
Sais, Gregorio
Saiz, Jerry J.
Salazar, Donald ETUX
Salisbury, Thelma
Salmon, Harvey
Salyer, Martha J.
Sanchez, Adolfo & Susie
Sanchez, Rigardo
Sanderson, Luther M.
Saslawsky, Manfred ETUX
Saunders, Murray & Eileen
Savage, Lew
Schaffer, Edwin & Elise
Schell, Vernon ETUX
Schlather, Harold ETUX
Schneider, Thomas ETUX
Schrock, Kenneth & Faith
Schultz, John ETUX
Schultz, Ken & Diane
Schultz, Donald & Kaye
Schweb, Leonard & Mary
Schwartz, Robert & Patti
Schwerkoske, Arthur ETUX
Schwichtenberg, Albert ETUX
Schruggs, Helen
Sears, Paul ETUX
Selman, Richard & Gisela
Serns, Steuart & Beverly
Seymour, Wayne R.
Shaw, Burnham ETUX
Shea, Richard J.
Shelford, Paul & Elizabeth
Shoup, Jack ETUX
Siegel, Verdell
Simmons, C. M. ETUX
Simms, Richard
Sipes, Lester & Joan
Sishc, Monte & Therina
Sluder, Chester & Louise
Smith, Chester & Thelma
Smith, Frederick & Augusta
Smith, Helen R.
Smith, Lawrence ETUX
Smith, Richard & Katherine
Smith, Terrell
Smith, William D.
Smock, Kenneth J.
Smythe, Samuel & Edna
Snowden, Ralph D.
Spalding, Charles & Janice
Sparks, Morgan ETUX
Spence, William & Joan
Spraggins, Lyle & Jean
Spring, Thelma A.
Stanley, Donald ETUX
Stegman, Jerry & Arlene
Stegmann, Wallace ETUX
Stevens, Donald P.
Stewart, Patricia
Stillions, William & Dora
Stradal, Kenneth ETUX
Straughan, Lee & Rosemarie

Strauss, Henry & Agnes
Stuart, Donald & Carol
Stuetzer, Othmar & Elizabeth
Sullivan, William & Dolores
Summers, Harvey & Joan
Swartz, Galen & Marie
Szyper, Edward J.
Sziada, Jose & Dorothy
Templeton, Thomas & Faye
Tennant, Edward ETUX
Texas Land & Dev. Co.
Theiler, Gertrude
Thieme, Martin & Ruth
Thompson, Gordon ETUX
Thompson, John R.
Thompson, Roy & Carol
Thurman, Mary & Charles
Tinker, June A.
Torr, Harry & Madonna
Tracy, Edward & Gertrude
Trask, Richard & Kathryn
Traver, Leo ETUX
Treadwell, Lamar D.
Tresemer, Michael
Trodden, John & Marie
Trujillo, Adelido
Tuttle, John
Upton, Edna Luella
Vtrup, Orville & Katheryn
Vallone, Rose & Marry
Van Vickle, Eldon & Glenith
Velarde, Leopoldo ETUX
Verga, John & Anastasia
Vigil, Ernesto
Vigil, Jose A. ETUX
Vortman, Luke & Betty
Wager-Smith, D. R. W. ETUX
Walker, Raymond D. ETUX
Walter, Lee
Weber, John P.
Wells, Marvin & Wauneta
Wells, Lorena
Wells, M. R.
Werntz, Billie L.
White, Charles ETUX
Wilcox, Geraldine W.
Wildenstein, Lillie
Will, Oliver ETUX
Willard, George ETUX
Williams, Albert ETUX
Wilson, Bettie
Wilson, Gary & Sue
Wilson, Patrick & Mary
Wimer, Bruce & Polly
Witt, Roy & Joanna
Wolf, Dean Francis
Wood, Estill & Ellen
Wood, Herman
Wood, James ETUX
Wood, Larry & Verna
Wray, James & Harriet
Yandell, Daryl B.
Yayle, W. E.
Yonas, Gerald & Jane
Yonack, Ralph
Zacharias, Sherman ETUX
Zesiger, Charles
Zich, Gordon & Patricia
Zurek, Charles & Mary
Culp, David ETUX

Appendix B

Allen, Stanley & Betty
A.M.D.E.C.
Baker, Bert E.
Benjamin, Allan & Gail
Bennett, Robert ETUX
Biazak, Gary & Robin
Charleson, Ron & Ada
Chavez, Tony & Juanita
Cochrell, Robert ETUX
DeLien, Horace & Maxima
Evola, Anthony ETUX
Fernandez, Orlando
Four Hills Dev. Corp.
Gabaldon, Ernest ETUX
Goodfellow, Gordon
Gough, Leonard & Helen
Greene, Edna
Henderson, Seth ETUX
Hill, Elaine & Leslie
Jones, David & Louise
King, David
Koenig, Paul & Aleene
Marsh, Edwin & Carol
McClellan, Ellis & Betty
McClelland, Georgia
Meggers, Frank
Messec, Harry ETUX
Murray, William & Lillian
Ottensmeyer, David & Mary
Ortiz, Stella & Margaret
Paradise Joint Venture
Paul's Homes, Inc.
Pepper, Claude & Evelyn
Pettit, Ray & Carol
Restifo, Joseph & Ann
Rhoads, Emily A.
Schultheis, Tom & Faye
Small, Gary & Keri
Sugden, James & Mary
Tresemer, David
Vigil, Jose A. ETUX
Windham, J. R. ETUX

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

RUBY APPELMAN, et al.,
Plaintiffs-Appellees,
and Cross-Appellants,

vs. No. 12,199

GEORGE BEACH, Assessor of
Bernalillo County, TIMOTHY
EICHENBERG, Treasurer of
Bernalillo County, and
BOARD OF COUNTY COMMISSIONERS
OF BERNALILLO COUNTY,
Defendants-Appellants
and Cross-Appellees.

IN THE DISTRICT COURT
OF BERNALILLO COUNTY
Gerald R. Cole, District Judge

Geer, Handley & Hunt
Hunter L. Geer
Albuquerque, New Mexico

Attorney for Appellees
and Cross-Appellants

McCulloch, Grisham & Lawless
Thomas L. Grisham
Albuquerque, New Mexico

Attorney for Appellants
and Cross-Appellees

Toney Anaya, Attorney General
Richard C. Bosson, Asst. Attorney General
Santa Fe, New Mexico

Amicus Curiae

OPINION

EASLEY, Justice

The Bernalillo County Assessor, Treasurer, and Board of County Commissioners (County) appeal from and *seek*

affirmation of the judgment of the trial court in Appelman's, and numerous other plaintiffs' (Appelman), suit against the County. Appelman's suit sought a refund of 1976 and 1977 property taxes or damages for excess property taxes paid and a reduction of her property tax valuation. Appelman cross-appeals from the trial court's judgment, asserting that it is not the proper remedy to relieve her injuries. We affirm.

At issue here is whether the legislative repeal of Section 7-36-17, N.M.S.A. 1978, renders the trial court's declaration that this statute is unconstitutional, a moot question. We also consider whether the proper remedy was ordered by the trial court. Since we conclude that it was, we do not address the other issues raised by Appelman in her cross-appeal concerning joinder, bar to recovery for taxes paid because of statutory limitations, and bar to rebates for failure to comply with statutory requirements.

In 1974, the County began the first county-wide program of revaluation of county property for property tax purposes since 1967. New assessed valuations were placed on various parcels of land up through late 1976. Although only approximately sixteen per cent of property in Bernalillo County had received new assessments by late 1976, Appelman alleges that the revaluation program was either discontinued or drastically curtailed. The County admits that it was cut back. The trial court made no findings as to this issue. Clearly, this situation left County Taxpayers paying property taxes at different rates: some, including Appelman, at full market value and the majority at 1967 assessed values.

In 1977, the Legislature passed Section 7-36-17, which limited increases in assessments on real property in the state caused by market factors, as opposed to rezoning, new improvements, and other specified actions, to ten per cent per annum. Whether the County cut back or halted the reappraisal program because of the passage of this statute is not clear from the record. This statute obviously did not offer any relief to Appelman. It merely limited the

amount of taxes she had to pay in the future. As to undervalued property not yet reappraised, it would take quite a few years, in many instances, at ten per cent increases in revaluation per year, to reach full market value.

In late 1977, Appelman filed her suit seeking a refund or damages for taxes paid and a reduction in her property valuation. Approximately $7,100,000.00 is being claimed by Appelman and other Bernalillo County taxpayers on the basis of discriminatory and unequal taxation. N.M. Const., Art. II, § 18 and Art. VIII, § 1; U.S. Const. Amend. XIV. Appelman did not and does not question the constitutionality of Section 7-36-17. In fact, she clearly would like to take prospective advantage of it. She would like to have her property tax valuation reduced to the level of other county nonreassessed property and then have her reassessments limited to ten per cent per year.

Although the constitutionality of the statute was not raised by any party, the trial court declared the statute unconstitutional and ordered the County to provide adequate funding to promptly continue and complete the property reappraisal program. After this appeal and cross-appeal had been filed, the Legislature repealed Section 7-36-17. N.M. Laws 1979, ch. 268, § 3.

The first issue we need address is whether the legislative repeal of this statute rendered the court's determination that is was unconstitutional a moot point. The County concedes that it is a moot point; Appelman claims it is constitutional. The only New Mexico case on point is *State v McNabb,* 38 N.M. 92, 28 P.2d 521 (1933). McNabb was the acting State Comptroller and the State sought and was granted a writ of mandamus ordering McNabb to give the State certain records in his office. This Court dismissed the appeal and stated that the repeal of the statute pursuant to which the State sought access to the records was one of he factors rendering the question on appeal moot.

The United States Supreme Court, in two recent cases, reached the same result after the relevant statutes, chal-

lenged on constitutional grounds, were repealed. *Kremens v. Bartley,* 431 U.S. 119 (1977); *Diffenderfer v. Central Baptist Church,* 404 U.S. 412 (1972). We do not need to address whether Section 7-36-17 is constitutional because this Court has repeatedly stated that it will not decide abstract or moot questions. *New Mexico Health & Social Services Dept. v. Chavez,* 85 N.M. 447, 513 P.2d 184 (1973); *New Mexico Bus Sales v. Michael,* 68 N.M. 223, 360 P.2d 639 (1961).

By this holding we are not saying that a party who has been injured by an unconstitutional statute which has been repealed is not entitled to relief. We are merely holding that it is not proper for this Court to decide whether this statute is constitutional or not. If Appelman had paid taxes pursuant to an allegedly unconstitutional statute which was later repealed, this Court would have to examine its constitutionality. If it were found to be unconstitutional, then Appelman would be entitled to a refund of her taxes paid *pursuant to the* unconstitutional statute. *See Dale Bellamah Co. v. Bernalillo County,* 92 N.M. 615, 592 P.2d 971 (1978). But Appelman did not pay her property taxes here pursuant to a statute the constitutionality of which is in question. Rather, she wishes to have applied to her taxes the limit established by Section 7-36-17. The County's actions here, which resulted in County taxpayers paying property taxes at different rates, does raise a constitutional question, but a different one, which is discussed below in the context of the proper remedy to which Appelman is entitled.

Appelman claims that the relief afforded her by the trial court does not redress her injuries. Since she has been paying more property taxes than other Bernalillo County property owners similarly situated, she claims she should have been granted the relief she requested: recovery of and damages for taxes paid and a rollback in her property valuation. Merely ordering the County to continue its reappraisal program was not the appropriate remedy, Appelman claims.

In *Skinner v. New Mexico State Tax Commission,* 66 N.M. 221, 223-4, 345 P.2d 750, 752 (1959), this Court stated:

> In New Mexico, it has long been the rule that a taxpayer who is not assessed more than the law provides has no cause for complaint in the courts in the absence of some well-defined and established scheme of discrimination or some fraudulent action, (citations omitted). The taxpayer's remedy is to have the assessing authority raise the value on the property claimed to be, valued too low to a level with his own, (citations omitted).

Appelman had her property reappraised at full market value. Section 7-36-15, N.M.S.A. 1978, the New Mexico statute relevant to the times in question, established the general method of valuation for property taxation purposes: its market value. Appelman was not "assessed more than the law provides".

Appelman pled neither fraud nor intentional discrimination. Further, there is nothing in the record to indicate any "well-defined and established scheme of discrimination or some fraudulent action." *Skinner, supra*; *In re Taxes Assessed Against Property of Scholle, etc.*, 42 N.M. 371, 78 P.2d 1116 (1938); *Ranch & Cattle Co. v. Board of Equalization*, 18 N.M. 531, 139 P. 159 (1914). Apparently, the County arbitrarily chose which parcels of land to reassess. It appears from the record that the only reason the County had not reassessed all county lands by late 1976, when the reappraisal program was cut back or halted, was simply that the County did not have the manpower and money to have had all the county property reassessed by then.

This Court reiterated the *Skinner* holding in 1979 in *Ernest W. Hahn, Inc. v. County Assessor, Etc.*, 92 N.M. 609, 592 P.2d 965 (1978). Although we realize that Appelman has been paying higher property taxes than other Bernalillo County property owners for a number of years, in *Hahn* we stated: "[t]emporary inequalities which result from the practicalities of carrying out a county-wide systematic and definite property appraisal program are inevitable and constitutional. This rule is universally accepted." *Id.* at 612, 592 P.2d at 968. *See Hamilton v. Adkins*, 250 Ala. 557, 35 So.2d 183 (1948), *cert. denied*, 335 U.S. 861

(1948); *Maricopa County v. North Central Dev. Co.*, 115 Ariz. 540, 566 P.2d 688 (Ct. App. 1977); *Rogan v. County Commissioners of Calvert County*, 194 Md. 299, 71 A.2d 47 (Ct. App. 1950); *Larson v. State*, 166 Mont. 499, 534 P.2d 854 (1975).

Only when fraud or systematic discrimination are present, as was the case in *Hahn, supra*, does the inequitable taxation give rise to a constitutional claim. If there is no constitutional claim, a taxpayer's remedy is limited to having the assessing authority raise the valuation of other properties to the level of his own. *Skinner, supra; State v. San Luis Power & Water Co.*, 51 N.M. 294, 183 P.2d 605 (1947); *Oden Buick, Inc. v. Roehl*, 36 N.M. 293, 13 P.2d 1093 (1932). And if the revaluation program ceases or fails to continue, then, in the absence of fraud or intentional discrimination, the taxpayer is still limited to seeking a continuance of the revaluation program. *See Skinner* at 226, 345 P.2d at 753.

It appears that Appelman sought the improper remedy; she should have requested that the County be ordered to raise the valuation level of other property in the county to full market value.

It is unlawful and grossly inequitable for one set of taxpayers to pay on market value and others to be charged at a much lower rate, as is indicated in this record. It is common knowledge, of which we take judicial notice, that these flagrant inequities exist throughout the state. Public officials who are responsible for reappraisal programs mandated by the Legislature are to be condemned for permitting such manifest discrimination.

The Property Tax Code, Sections 7-35-1 *et seq.*, N.M. S.A. 1978, provides the scheme whereby these inequities can and should be avoided. It is the individual county assessors who are responsible for maintaining current and correct property valuations. §§ 7-36-2 and 7-36-16, N.M.S.A. 1978. If a board of county commissioners has not allocated adequate funds for the county assessor to fulfill his responsi-

bility, there is a remedy in mandamus. The New Mexico Department of Finance and Administration has considerable control over county budgets that could be employed. § 7-36-16(D).

Ultimately, the Director of the Property Tax Division of the Taxation and Revenue Department has general supervisory authority over county assessors. § 7-35-3, N.M.S.A. 1978. If the Director finds a county assessor is not fulfilling his responsibilities, the Director has a statutory duty to notify the county assessor and his board of county commissioners of this fact, hold a hearing, and consider suspending the county assessor if the situation is not rectified, assuming the assessor's responsibilities and charging the costs to the particular county. § 7-35-6, N.M.S.A. 1978.

These statutes are unambiguous. The Legislature obviously intended that they be enforced. Ours being a system of laws, they should be enforced unless and until the Legislature speaks further on the subject.

Appelman also raises the issue of whether the trial court had the power to order the county to provide adequate funding and to order that the reappraisal program be promptly completed, when she had not requested this relief. As this Court recently stated: "New Mexico now clearly allows any appropriate relief to be granted in a case regardless of what is specifically requested in the pleadings" *State ex rel. Newsome v. Alarid*, 90 N.M. 790, 798-9, 568 P.2d 1236, 1244-5 (1977). We there stated that the filing of a complaint seeking relief of one sort is not an irrevocable election of remedies precluding the granting of relief of another kind. The trial court here had the power to award the relief it did.

We affirm.

IT IS SO ORDERED.

s/MACK EASLEY
Justice

WE CONCUR:
s/DAN SOSA, JR., Chief Justice
s/WILLIAM R. FEDERICI, Justice

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
IN THE DISTRICT COURT

RUBY APPLEMAN, et al.,
Plaintiffs,

vs. No. 24296 - Tax Case

GEORGE BEACH, Assessor of Bernalillo County, TIMOTHY EICHENBERG, Treasurer of Bernalillo County, and BOARD OF COUNTY COMMISSIONERS OF BERNALILLO COUNTY,
Defendants.

JUDGMENT

THIS MATTER having come before the Court for hearing on the second, third, fourth, fifth and seventh affirmative defenses raised in the responsive pleading filed herein, and the Court having heard arguments of counsel, having reviewed the Court file, having considered the stipulations made in open court and the stipulations filed herein on September 12, 1978, the Court concludes:

1. The joiner of Group B plaintiffs on December 15, 1977, was improper in that there was no class action rule in effect which applied to the case. Rules governing class actions are procedural in nature and under our Constitution within the jurisdiction of the Judicial Branch of Government. When the Supreme Court acted in this field by adopting Rule 23, such action preempted any force and effect of Section 26-6-1. The Supreme Court revoked the adoption of Rule 23 (a) and (c) effective June 15, 1976, by Order number 8,000 Miscellaneous and such action left the District Courts without any class action jurisdiction except that covered by Rule 23 (b).

2. The joinder of Group B plaintiffs under Rule 19 is not, and was not, appropriate (1) for complete relief can be

accorded among those already parties, (2) this action would not impair or impede Group B parties ability to protect their interests, and (3) the failure to join Group B parties would not subject present parties to a substantial risk of double, multiple, or inconsistent obligations.

3. All plaintiffs, and all persons in Group B are or would be precluded from recovering tax rebates for the year 1976 or prior years by their failure to file suit within the time required by Section 72-31-40.

4. All persons in Group B are barred from recovering tax rebates for the year 1977 by reason of their failure to substantially comply with Section 72-31-40 (a) (4).

5. Because of the ruling of the Court that (1) the plaintiffs cannot recover taxes for 1976 and prior years, claims for which no suspense fund was established and therefore there exists no possiblity of the following parties being asked to disgorge funds distributed, and (2) the suit is limited to claims of Group A and C plaintiffs for 1977 taxes which ruling limits the overall claims to less than 100,000, the Middle Rio Grande Conservancy District, Bernalillo County Medical Center, the Albuquerque Metropolitan Arroyo Flood Control Authority, City of Albuquerque, and State of New Mexico are not parties required to be joined by Rule 19.

6. Section 72-29-6.1 N.M.S.A. 1953, is unconstitutional on its face as a violation of Article 8, Section 1, and Article 2, Section 18 on the Constitution of New Mexico for such section. When read together with Section 72-29-5 (b), this section creates a situation where property valued for taxation purposes using market value as determine by comparable property method of evaluation may not be taxed at full market value while other properties of the same class, including but not limited to the following, will be taxed at full market value.

a. property valued by income method.

b. property valued by cost method (new construction).

c. property which is rezoned.

d. property which is divided during the year.

7. Section 72-29-6.1 N.M.S.A. 1953, is unconstitutional as applied to Bernalillo County as a violation of Article 8, Section 1, and Article 2, Section 18 of the Constitution of New Mexico for it creates a situation where property valued for taxation purposes using market value as determined by comparable property method of evaluation may not be taxed at full market value while other properties of the same class, including those listed in paragraph 6 and the 32,500 parcels of property reappraised and placed on the tax rolls prior to the effective date of the act, are taxed at full market value.

Based upon the above conclusions the Court must then determine what relief would be appropriate and available to the parties in this case at this stage of the case. The plaintiffs urge that the appropriate relief would be to roll back taxes as if Section 72-29-6.1 N.M.S.A. 1953 had been enacted prior to the county's beginning its reappraisal program in 1974. Such approach would afford relief to those plaintiffs whose property was placed upon the assessment rolls by reason of a reappraisal. But, there would still be a basic defect in that plaintiffs position affords the Court no direction on how to equalize taxation as to those plaintiffs (Group C) and other persons whose property is, was, or will be placed upon the tax rolls at full market value because the evaluation is by the income approach or the cost approach (all new construction).

For example, a house may not be on the tax rolls at full value because of the limitations of acts such as Section 72-29-6.1. If an identical house of identical value were constructed next to the first house, the second house would go on the tax rolls at full value under Section 72-29-5 (b). Result: Two identical houses with identical values on the tax rolls at different values.

Any method of evaluation for tax purposes which requires that some properties be placed upon the tax rolls at full market value, but limits the ability of the county to place all the properties on the tax rolls at full market value, would be unconstitutional.

Therefore, the only relief the Court can give is to order that all properties be placed upon the tax rolls at the same percentage of market value. The legislature, in its wisdom, has determined that to be 100 percent, therefore, the only possible relief that this Court can grant at any stage of this case is to order the County Assessor to promptly complete the overall reappraisal of Bernalillo County and keep it current on an ongoing basis in order to assure that properties are placed and kept reasonably current on the tax rolls at 100 percent of market value.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. The County Assessor shall continue and promptly complete the reappraisal program begun in 1974.

2. The County Assessor shall operate the office and the reappraisal program as if Section 72-29-6.1 had never been enacted.

3. The County Commissioners of Bernalillo County shall adequately fund the Assessors Office in order that the reappraisal may be completed within a reasonable time.

s/GERALD R. COLE,
DISTRICT JUDGE

7-36-15. Methods of valuation for property taxation purposes; general provisions.[1]

A. Property subject to valuation for property taxation purposes under this article of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] shall be valued by the methods required by this article of the Property Tax Code whether the determination of value is made by the department or the county assessor. The same or similar methods of valuation shall be used for valuation of the same or similar kinds of property for property taxation purposes.

B. Unless a method or methods of valuation are authorized in Sections 7-36-20 through 7-36-33 NMSA 1978, the value of property for property taxation purposes shall be its market value as determined by sales of comparable property or, if that method cannot be used due to the lack of comparable sales data for the property being valued, then its value shall be determined using an income method or cost methods of valuation. In using any of the methods of valuation authorized by this subsection the valuation authority shall apply generally accepted appraisal techniques.

C. Dams, reservoirs, tanks, canals, irrigation wells, installed irrigation pumps, stock-watering wells and pumps, similar structures and equipment used for irrigation or stock-watering purposes, water rights and private roads shall not be valued separately from the land they serve. The foregoing improvements and rights shall be considered as appurtenances to the land they serve and their value shall be included in the determination of value of the land.

D. The department shall adopt regulations in accordance with the procedures in Section 7-38-88 NMSA 1978 to implement the methods of valuation authorized in this article of the Property Tax Code.

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[1]. Formerly codified as § 72-29-5 N.M.S.A. 1953 Comp.

7-38-40. Claims for refund; civil action.[1]

A. Claims for refund shall be filed by the property owner as a civil action in the district court for the county in which the valuation was determined if the property was locally valued or in the district court for Santa Fe county if valued by the department. Claims shall:

(1) be filed against the director as party defendant if the property was valued by the department, against the county as party defendant if the property was valued by the assessor and shall be filed no later than December 15 of the year in which the first installment of the property tax for which a claim for refund is made is due:

(2) state the property owner's name and address and the name and address of any person other than the property owner to whom the tax bill was sent;

(3) state the basis of the claim for refund;

(4) state the amount of the refund to which the property owner believes he is entitled, the amount of property taxes admitted as legally due and the property taxes paid; and

(5) demand the refund to him of the amount to which he claims entitlement.

B. The director shall notify the appropriate county treasurer immediately when a claim for refund is filed against the director.

C. The property owner, the county or the director may appeal to the court of appeals from any final decision or order of the district court in a claim for refund case in which they are parties.

D. Upon the final determination of the property owner's claim filed against the director, the director shall send

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1. Formerly codified as §72-31-40 N.M.S.A. 1953 Comp.

a copy of the final order to the county treasurer and shall order the county assessor to change the valuation records to clearly reflect the final determination of the property owner's claim. The department shall change its valuation records accordingly.

E. Upon the final determination of the property owner's claim filed against the county, the treasurer shall send a copy of the final order to the county assessor and to the director. The county assessor and the department shall change their respective valuation records to clearly reflect the final determination of the property owner's claim.

Supreme Court, U. S.
FILED
AUG 28 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979

No. 79-1986

RUBY APPELMAN, et al.,
Petitioners,

v.

GEORGE BEACH, Assessor of Bernalillo County, TIMOTHY EICHENBERG, Treasurer of Bernalillo County, and BOARD OF COUNTY COMMISSIONERS OF BERNALILLO COUNTY,
Respondents.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW MEXICO

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September 2, 1980

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IN THE

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RUBY APPELMAN, et al.,
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v.

GEORGE BEACH, Assessor of Bernalillo County, TIMOTHY EICHENBERG, Treasurer of Bernalillo County, and BOARD OF COUNTY COMMISSIONERS OF BERNALILLO COUNTY,
Respondents.

OPPOSING BRIEF TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW MEXICO

Respondents herein respectfully request that the Petition for a Writ of Certiorari requested herein to review the Opinion of the New Mexico Supreme Court be denied. The Opinion is cited as *Appelman v. Beach*, ---N.M. ---, 608 P.2d 1119 (1980).

JURISDICTION

Petitioners seek a review of the New Mexico Supreme Court's decision. Rule 19(1) (a) of the Supreme Court Rules, 28 U.S.C.A. (Rules) provides for a review of a Writ of Certiorari on questions arising:

> Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court.

Rule 19 states that a review on Writ of Certiorari is

not a matter of right, but is a question of sound judicial discretion.

QUESTION PRESENTED

The Petitioners, Plaintiffs below, sought a refund of a portion of their property taxes for the years 1976 and 1977, alleging the Defendants had appraised their property at full market value under a reappraisal program which began in 1974 and continued to the 1977 tax year, and which was ongoing in nature. The reappraisal for the 1977 schedule was placed on the tax rolls, but because of the enactment of legislation the property appraisals were reduced to the 1976 appraisal plus 10%. §7-36-17, N.M.S.A. 1978 (Repealed) Appendix "A", p. 11.

The trial court declared the statute unconstitutional and ordered the County Assessor to continue and promptly complete the reappraisal program, and for the County Commissioners to fund such a program. (Petitioners' Brief, Appendix "D", p. 33).

The New Mexico Supreme Court stated in its Opinion that only when fraud or systematic discrimination are present does the inequitable taxation give rise to a constitutional claim. (Petitioners' Brief, Appendix "B", p. 28).

The QUESTION PRESENTED is whether the United States Constitution requires a remedy of refund or damages when there was no pleading of nor showing of fraud or systematic discrimination.

STATUTES INVOLVED

Section 7-36-17, N.M.S.A. 1978; *see* Appendix "A", p. 11.

STATEMENT OF THE CASE

Taxpayers sought a refund of *ad valorem* taxes paid to Bernalillo County, New Mexico, for the years 1976 and 1977. The statute of limitations had run for the filing of a refund for 1976 taxes. (Petitioners' Brief, Appendix "F", p. 35). The County had commenced a reappraisal program in 1974; the reappraisal for 1977 tax rolls was not used because of §7-36-17, N.M.S.A. 1978 (Repealed). The Petitioners filed the claim for refund in the District Court of Bernalillo County, New Mexico, on December 14, 1977.

The trial court was asked to roll back the appraisal, and thereafter limit the taxes or the increase thereon to 10% for each year thereafter. This would in effect provide relief to the taxpayers who were claiming that their property had been reappraised and placed on the tax rolls prior to the completion of the reappraisal program.

The trial court stated:

> Any method of evaluation for tax purposes which requires that some properties be placed upon the tax rolls at full market value but limits the ability of the County to place all the properties on the tax rolls at full market value would be unconstitutional.
>
> Therefore, the only relief the Court can give is to order that all properties be placed upon the tax rolls at the same percentage of market value. The legislature, in its wisdom, has determined that to be 100 percent, therefore, the only possible relief that this Court can grant at any stage of this case is to order the County Assessor to promptly complete the overall reappraisal of Bernalillo County and keep it current on an ongoing basis in order to assure that properties are placed and kept reasonably current on the tax rolls at 100 percent of market value.

In affirming the lower court, the New Mexico Supreme Court stated:

> This Court reiterated the *Skinner* holding in 1979 in *Ernest W. Hahn, Inc. v. County Assessor, Etc.*, 92 N.M. 609, 592 P.2d 965 (1978). Although we realize that Appelman has been paying higher property taxes than other Bernalillo County property owners for a number of years, in *Hahn* we stated: "[t]emporary inequalities which result from the practicalities of carrying out a county-wide systematic and definite property appraisal program are inevitable and constitutional. This rule is universally accepted." *Id.* at 612, 592 P.2d at 968. *See Hamilton v. Adkins*, 250 Ala. 557, 35 So.2d 183 (1948), *cert. denied*, 335 U.S. 861 (1948); *Maricopa County v. North Central Dev. Co.*, 115 Ariz. 540, 566 P.2d 688 (Ct. App. 1950); *Larson v. State*, 166 Mont. 499, 534 P.2d 854 (1975).

The Supreme Court of New Mexico found the remedy afforded the taxpayer to be correct.

The Opinion of the Supreme Court of New Mexico correctly decided a federal question, and decided it consistent with the appropriate decisions of this Court.

REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI

Petitioners cite no cases wherein damages were awarded or taxes refunded to those adversely affected by an ongoing though incompleted tax equalization or reappraisal program. The Supreme Court of the State of New Mexico afforded Petitioners their proper remedy by affirming the lower court order that the reappraisal program be promptly completed. Petitioners rely primarily upon two United States Supreme Court cases easily distinguished, and a New Mexico Supreme Court case consistent with the judgment in the present case.

Petitioners rely first upon *Sioux City Bridge Company v. Dakota County, Nebraska*, 260 U.S. 441 (1923), wherein the owners of a bridge were taxed upon the bridge's full value while other property in the district was taxed at fifty-five percent of its value. The United States Supreme Court rejected the Supreme Court of Nebraska ruling that the bridge owners' redress was to have other property in the taxing district taxed at full value: "such a result . . . is to deny the injured taxpayer any remedy at all because it is utterly impossible for him by any judicial proceeding to secure an increase in the assessment of the great mass of under-assessed property in the taxing district." *Id.* at 446.

In the present controversy it was indeed possible for Petitioners to secure increased assessments, and such relief the Supreme Court of New Mexico granted. It should further be noted that in *Sioux City* an individual piece of property was alone reassessed at full value, while Petitioners' properties were reassessed as part of a comprehensive program. Finally, the United States Supreme Court in *Sioux City* did not grant damages or a tax refund as Petitioners here seek.

The other United States Supreme Court case relied upon by Petitioners is *Township of Hillsborough v. Cromwell*, 326 U.S. 620 (1946). An individual taxpayer prayed that certain tax assessments be invalidated because she allegedly had been systematically singled out for discriminatory treatment. The Supreme Court affirmed the granting of such relief, holding that a taxpayer intentionally discriminated against should not be imposed upon to seek upward revision of the taxes of others. In *Hillsborough*, as in *Sioux City*, one or a few individual taxpayers were taxed at higher rates than other members

of the class for no legitimate reason. Petitioners here number one thousand forty-seven and paid higher rates merely because they and others were the first of the class to be affected by a comprehensive reappraisal program (Petitioners' Appendix "A", p. 14).

The tax assessment in *Hillsborough* was invalidated because of the presence of intentional, systematic "discrimination" as that term is employed in connection with the equal protection clause of the Fourteenth Amendment. See *id.* at 623. Petitioners contend that the New Mexico Supreme Court found such discrimination when it reprimanded public officials in charge of the reappraisal program for permitting "manifest discrimination." (See Petitioners' Appendix "C", p. 28).

Although perhaps an unfortunate word choice, the court clearly referred to "discrimination" in a generic sense and not in a manner recalling the equal protection clause. Two paragraphs previously, the court had noted that "[o]nly when fraud or systematic discrimination are present . . . does the inequitable taxation give rise to a constitutional claim." (Petitioners' Appendix "C", p. 28). Moreover, Petitioners did not even plead "fraud [or] intentional discrimination." (Petitioners' Appendix "C", p. 27). Thus, they are ineligible for the remedy prescribed in *Hillsborough*.

Petitioners, finally, argue for entitlement to damages or a refund from *Skinner v. New Mexico State Tax Commission*, 66 N.M. 221, 345 P.2d 750 (1959), a case somewhat similar to the present one. The New Mexico Supreme Court there found an incompleted tax equalization program constitutionally sound based on the "presumption that tax officials will do their duty," and that the program

would proceed expeditiously. "In the event there is a failure to so continue, appellants would be fully justified in taking such action as might be required to force a corresponding revaluation of all of the other property in the county." *Id.* at 225-26, 345 P.2d 750, 753.

Petitioners offer that the reappraisal program in the present case was discontinued, that they had sought redress as *Skinner* counsels, yet were afforded no relief. In fact, Petitioners were granted the relief *Skinner* foresaw — an order to reappraise the rest of the county.

Further, Petitioners seek to infer that the reappraisal program was discontinued; the reappraisal program was an ongoing program to the January 1, 1978 tax rolls (Appendix "B", p. 13).

The weakness of Petitioners' argument and the inapplicability of their authorities point to the propriety of the New Mexico Supreme Court's judgment in *Appelman v. Beach* (Petitioners' Appendix "C", p. 23). *Appelman* stands together with decisions by this Court and many others, disallowing claims based upon the inevitable temporary inequalities attending tax equalization and reappraisal programs until they are completed. E.g., *Sunday Lake Iron Company v. Township of Wakefield*, 247 U.S. 350 (1918); *Hamilton v. Adkins*, 35 So.2d 183 (Ala. 1948), *cert. denied*, 335 U.S. 861; *Hillock Bade*, 523 P.2d 97 (Ariz. Ct. App. 1974), *aff'd per curiam*, 535 P.2d 130 (1975).

In *Sunday Lake Iron, supra*, a state board raised the assessment on plaintiff's mining property from $65,000 to $1,071,000 pursuant to a legislative act to reassess all mining properties. Due to a lack of time and inadequate information the board did not reappraise other land in

that year, although land was generally assesed at not more than one-third its actual value. Because the board's action was "not incompatible with an honest effort in new and difficult circumstances to adopt valuations not relatively unjust or unequal," the taxpayer was denied relief. *Id.* at 353. The Court stated:

> . . . mere errors of judgment of officials will not support a claim of discrimination. There must be something more — something which in effect amounts to an intentional violation of the essential principal of practical uniformity. *Id.*

The New Mexico Supreme Court noted that Petitioners here did not even plead "intentional discrimination." (Petitioners' Appendix "C", p. 27). When the New Mexico Supreme Court "condemned" reappraisal program officials "for permitting such manifest discrimination," it was merely reprimanding the officials for something akin to "mere errors of judgment." It was not declaring the existence of an intentional, systematic discrimination at odds with the equal protection clause of the Fourteenth Amendment.

The Court, in one case relied upon by Petitioners, *Sioux City Bridge Company v. Dakota County, Nebraska,* 260 U.S. 441 (1923), would not insist that an aggrieved taxpayer, not a victim of intentional discrimination, seek to have all other properties reappraised upward. In that case there was no program already in place to achieve such an end.

In the other Supreme Court case relied on by Petitioners, *Township of Hillsborough v. Cromwell,* 326 U.S. 620 (1946), this Court invalidated certain tax assessments. In that case an intentional, systematic discrimination was

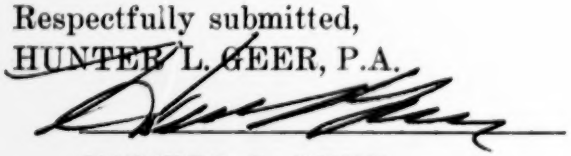
found. In this case there was no intentional discrimination and there was a reappraisal program in existence. The New Mexico Supreme Court correctly found the assessments valid and properly ordered the prompt completion of the reappraisal program to redress the Petitioners.

In *Hamilton v. Adkins*, 35 So.2d 183 (Ala. 1948), *cert. denied*, 335 U.S. 861, the Alabama Supreme Court held, in the context of a four year reappraisal program, that no violation of constitutional principles of equality and uniformity of taxation existed. Although temporary inequalities existed, as here, in the absence of a showing of intentional, systematic discrimination, the assessments were valid. This Court denied the application for Writ of Certiorari in that case and should do so in this case.

CONCLUSION

For the reasons stated above, Respondent respectfully submits that a Petition for a Writ of Certiorari should be denied.

Respectfully submitted,
HUNTER L. GEER, P.A.



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I, Hunter L. Geer, Attorney for the Respondents herein and a member of the Bar of the Supreme Court of the United States, hereby certify that I served copies of the foregoing Response to the Petition for a Writ of Certiorari to the Supreme Court of New Mexico on the Petitioners

herein by mailing copies in duly addressed envelopes, with first class postage prepaid, to their attorney of record for the Petitioners as follows:

To: Thomas L. Grisham, Esq.
Counsel to Petitioners
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Dated this 28th day of August, 1980.

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Appendix A

Section 7-36-17, N.M.S.A., 1978. *Limitations.* Limitation on increases in valuation of certain property for property taxation purposes.[1]

A. The limitation upon increases in valuation of property for property taxation purposes provided in Subsection B of this section shall apply only to property that is valued for property taxation purposes under Subsection B of Section 72-29-5 N.M.S.A. 1953 using the market value as determined by sales of comparable property method of valuation.[2]

B. For property described in Subsection A of this section, its value for property taxation purposes in a property tax year shall not exceed the value determined for it in the previous property tax year by an amount equal to ten percent of the value determined for that previous property tax year.

C. The limitation on property value increase described in Subsection B of this section shall not apply to any increase in valuation from the preceding property tax year arising from:

(1) the addition of improvements, whether by declaration of the property owner or user or any other action including the action of a county assessor to add previously omitted improvements, or the remodeling or renovation of existing improvements;

(2) any rezoning or similar action of a governmental body that results in a change of permitted use of the property;

(3) division of the property into two or more parcels for any purpose; or

(4) any other factor resulting in an increase in value other than appreciation resulting from market conditions.

---

[1] Formerly codified as §72-29-6.1, N.M.S.A. 1953 (1976-77 Interim Supp.); Repealed, 1979, New Mexico Laws, Ch. 268, §3.

[2] See Appendix E, page 34, Petitioners' Brief for full text of Subsection B of Section 72-29-5, N.M.S.A. 1953.

APPENDIX B

STATE OF NEW MEXICO
COUNTY OF BERNALILLO

IN THE DISTRICT COURT

RUBY APPELMAN, et al.,
Plaintiffs,

vs. No. 24296 - Tax Case

GEORGE BEACH, et al.,
Defendants.

STIPULATION

The parties stipulate to the following facts:

1. Group A and Group C Plaintiffs are those named individually in Exhibit A, C of Plaintiffs Complaint.

2. Group B Plaintiffs are those unnamed individuals whose property is located in Bernalillo County, New Mexico, in the areas listed by section numbers of the Uniform Property Code in Exhibit B of Plaintiffs' Complaint, and which property was revalued during the Countywide revaluation program which began in late 1974, and placed on the 1977 tax roll at full market value.

3. Group A, B, and C Plaintiffs failed to file suit as required by Section 72-31-39 and 40 N.M.S.A., 1953 Comp. (1975 Supp.) as to 1976 property tax refunds.

4. Plaintiffs ask for no relief for taxes for 1975 and prior years.

5. Group A Plaintiffs' property was reappraised in 1975 and 1976 and was placed on the tax rolls of Bernalillo County of January 1, 1977, at their market value as determined by the assessment pursuant to the reappraisal program.

6. Group C Plaintiffs were placed on the tax rolls at full market value for 1977.

7. District Judge Phillip Baiamonte conducted no hear-

ing on December 15, 1977, prior to signing the Order joining Group B Plaintiffs involuntarily.

8. The County had reappraised approximately 30,000 parcels of property between 1974 and 1977.

9. The Plaintiffs' properties had been placed on the tax rolls of Bernalillo County at the reappraised values for taxes assessed and collected for the calendar year 1977.

10. Defendant's reappraisal program commenced in late 1974 was targeted for completion over a four year period and said program was to be ongoing in nature and was in fact ongoing as of December 31, 1976. The parties dispute whether the program was abandoned after December 31, 1976.

11. Approximately 27,000 parcels of property which had been reappraised in 1976 under the reappraisal program started in 1974, were put on the tax rolls at full value on January 1, 1977. By order of the Property Tax Department, these properties were reduced on the tax rolls to not more 1976 appraisal value plus 10%.

12. Approximately 8,000 parcels of property which had been reappraised under the reappraisal program which started in 1974 were placed on the tax rolls on January 1, 1978, at no more than that prior value plus 10%.

13. No other properties were reappraised pursuant to the reappraisal program and placed on the tax rolls of Bernalillo County at their new full appraisal value on either January 1, 1977, or January 1, 1978.

APPROVED:
SANDRA A. GRISHAM
Attorney for Plaintiffs
/s/Hunter L. Geer
HUNTER L. GEER
Attorney for Defendants
APPROVED:
/s/Gerald R. Cole
GERALD R. COLE
District Judge

I hereby stipulate to the above facts, without, however, waiving any of the Plaintiffs' Requested Findings of Fact and without stipulating that the above facts are sufficient facts upon which to render a decision regarding the affirmative defenses.

/s/Sandra A. Grisham
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